

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ROBERT H. CARP,

Plaintiff,

v.

**ANDREW SWAYSE, WAYNE SAUSMER,
XANTHI GIONIS, BESSIE GIONIS,
THOMAS ROWE, and JOHN DOES #1-3,**

Defendants.

**Civil No.
14-13230-FDS**

ORDER OF DISMISSAL AND TO SHOW CAUSE

SAYLOR, J.

This is a diversity action alleging defamation, tortious interference with business relations, and breach of contract. Plaintiff Robert H. Carp has brought suit against defendants Andrew Swayse, Wayne Sausmer, Xanthi Gionis, Bessie Gionis, Thomas Rowe, and three unknown defendants.

On August 5, 2014, plaintiff filed the complaint in this case. The summons issued on August 6, 2014. On January 5, 2015, the Court issued an order for plaintiff to show cause in writing by February 2, 2015, why this matter should not be dismissed for failure to serve any of the defendants.¹ Plaintiff returned an executed summons to this Court on January 16, 2015. According to the returned summons, it was served on December 21, 2014 on an individual named Timothy C. Rowe.

¹ The electronic entry that accompanied the order to show cause erroneously indicated that the response was due by February 5, 2015.

Pursuant to Fed. R. Civ. P. 4,

If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

No other summons have been returned executed, and plaintiff has not filed a response to the Court's January 5 order to show cause. The returned summons was served after 120 days had passed, and it was served on a nonparty. There is no defendant in this case by the name Timothy C. Rowe; rather, there is a defendant by the name Thomas Rowe.

Accordingly, the claims against defendants Andrew Swayse, Wayne Sausmer, Xanthi Gionis, Bessie Gionis, and John Does I-III are DISMISSED without prejudice. Because plaintiff did not serve Rowe within 120 days and appears to have served the incorrect defendant, he is ORDERED to show cause in writing on or before February 26, 2015, why this matter should not be dismissed as to Thomas Rowe. Absent good cause shown, this matter will be dismissed.

So Ordered.

Dated: February 11, 2015

/s/ F. Dennis Saylor
F. Dennis Saylor IV
United States District Judge